

SERVICE DATE—JULY 7, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 362X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN ISLE OF WIGHT COUNTY AND THE CITY OF SUFFOLK, VA.

Digest:¹ This decision allows Norfolk Southern Railway Company to discontinue its freight rail service over approximately 17.8 miles of rail line in the City of Suffolk and Isle of Wight County, Va., subject to standard employee protective conditions.

Decided: July 3, 2014

By petition filed on March 20, 2014, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the provisions of 49 U.S.C. § 10903 to discontinue service over an approximately 17.8-mile rail line, extending from milepost FD 19.2 in the City of Suffolk to milepost FD 37.0 near Franklin, in Isle of Wight County, Va. (the Line). Notice of the exemption was served and published in the Federal Register on April 9, 2014 (79 Fed. Reg. 19,707).

No comments in opposition to the proposed discontinuance were filed. We are granting the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

The Line is part of a stub-ended branch line NSR refers to as the Franklin District, which originally was built as a through route from the Virginia Tidewater area to Danville, Va. According to NSR, the Line was built by the Atlantic & Danville Railway in the 1800s and was leased by the Southern Railway Company, a NSR predecessor, until 1949, at which time it returned to independent operation. The Norfolk & Western Railway Company, another NSR predecessor, acquired the Line in the 1960s and formed the Norfolk, Franklin & Danville Railway Company (NFDR) to operate it. Before being absorbed into NSR in 1983, NFDR had gradually stopped using the portion of the Line west of Edgerton, which had become the westernmost extension of NSR's Franklin District and had devolved from a secondary trunk line to a branch line relying on local traffic. Recently, the Board granted an exemption to NSR to discontinue service over a 53.2-mile portion of the Franklin District to the west of the line at

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

issue, extending from milepost FD 37.0 near Franklin, to the end of the line at milepost FD 90.2 at Edgerton (western segment).²

NSR argues that the Line is a burden on NSR and interstate commerce because the potential annual revenue that the Line's remaining shippers could generate would be heavily outweighed by the costs of maintaining and operating it. NSR claims a base year normalized maintenance cost of \$262,455 (\$14,745 per track mile) and projects a forecast year normalized maintenance cost of \$266,546 (\$14,974 per track mile), due to the deteriorated condition of the Line. NSR states that the Line experienced a base year avoidable loss from rail operations of \$544,239, and it projects a forecast year avoidable loss from rail operations of \$552,724.

Further, NSR contends that the line is no longer in operable condition and would require a significant investment to rehabilitate it. NSR states that as of January 31, 2014, service over the Line has been suspended due to deteriorating track conditions. NSR states that, prior to the suspension of service, the Line was structurally limited to freight cars with a gross maximum weight of 263,000 pounds. NSR argues that to return the Line to Federal Railroad Administration (FRA) Class I track safety standards would require an upfront cost of \$1,027,500. NSR states that the necessary rehabilitation costs cannot be recouped because the Line cannot be operated profitably.

NSR states that it handled 203 carloads originating or terminating on the Line in the 12 months ending in September 2013. NSR states that the majority of these carloads consisted of caustic sodium used in the manufacturing of paper products. NSR states that the Line serves the following three customers: International Paper, Specialty Minerals Inc. (Specialty Minerals), and Meherrin Agriculture & Chemical (Meherrin).³ According to NSR, most of the carloads NSR handled were destined to International Paper. NSR states that International Paper is also served by CSX Transportation, Inc. (CSXT) and so would continue to have access to rail service if the proposed discontinuance were granted, and that all three shippers would also have extensive truck service options via the existing highway system. NSR adds that because the Line is stub-ended and no traffic has originated or terminated on the now-discontinued western segment since October 2013, there is no overhead traffic.

² Norfolk S. Ry.—Discontinuance of Service Exemption—in Isle of Wight, Southampton, Greenville, & Brunswick Cntys., Va., AB 290 (Sub-No. 359X) (STB served March 13, 2014).

³ NSR certifies that it has served a copy of its discontinuance petition for exemption on these three shippers.

NSR states that it has pursued the transfer of operations to potential short line operators, but none were interested due to the Line's low traffic density and the level of rehabilitation required to keep the Line in service.⁴

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy (RTP) in this case. The Line's shippers have neither opposed the proposed discontinuance nor indicated that they would be adversely affected by it. By minimizing the administrative expense of the application process, an exemption would expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by more quickly permitting NSR to formally discontinue operations on a line that needs rehabilitation and can only be operated at a substantial loss. 49 U.S.C. §§ 10101(5) and (9). Other aspects of the RTP would not be adversely affected by the use of the exemption process.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power.⁵ As noted, no shippers oppose the discontinuance, and the record indicates that viable transportation alternatives are available. Nevertheless, to ensure that the three remaining shippers are informed of this proceeding and of our action here, we will direct NSR to serve a copy of this decision on International Paper, Specialty Minerals, and Meherrin so that they receive it within five days of the service date of this decision, and to certify to the Board contemporaneously that it has done so.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose upon NSR the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

⁴ V.S. Kirchner 3.

⁵ Given our market power finding, we need not determine whether the proposed discontinuance is limited in scope.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Line for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances. Environmental reporting requirements under 49 C.F.R. § 1105.7 and historic reporting requirements under 49 C.F.R. § 1105.8 do not apply. See 49 C.F.R. §§ 1105.6(c) and 1105.8(b).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of service by NSR of its operations over the above described line, subject to the employee protective conditions set forth in Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
2. NSR is directed to serve a copy of this decision on the Line’s existing shippers so that they receive it within five days after the service date of this decision and to certify contemporaneously to the Board that it has done so.
3. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by NSR and the Board by July 17, 2014, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,600. See 49 C.F.R. § 1002.2(f)(25).
4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “Office of Proceedings, AB-OFA.”
5. Petitions to stay must be filed by July 22, 2014. Petitions to reopen must be filed by August 1, 2014.
6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on August 7, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.